

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

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JAMES E. ERVIN,

Plaintiff,

vs.

CIVIL NO.: 06-CV-11681-DT  
HON. ROBERT H. CLELAND

COMMISSIONER OF SOCIAL  
SECURITY

Defendant.

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**ORDER ADOPTING MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION**

This matter is before the court on the parties' cross motions for summary judgment. The case was referred to United States Magistrate Judge R. Steven Whalen pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 72.1. The magistrate judge issued his report on April 30, 2007 recommending that this court deny defendant's motion for summary judgment, grant plaintiff's motion for summary judgment to the extent that the case be remanded to the Administrative Law Judge for further fact-finding and consideration. No objections have been filed pursuant to 28 U.S.C. §636(b)(1)(C); thus further appeal rights are waived.<sup>1</sup>

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<sup>1</sup> The failure to object to the magistrate judge's report releases the court from its duty to independently review the motion. See *Thomas v. Arn*, 474 U.S. 140,149 (1985).



Having reviewed the file and the report, the court determines that the findings and conclusions of the magistrate judge are correct and **ADOPTS** the same for purposes of this order.

**ORDER**

IT IS ORDERED that, for the reasons set forth in the Magistrate Judge's Report and Recommendation, the defendant's motion for summary judgment is **DENIED**, plaintiff's motion for summary judgment is **GRANTED, to the extent that the Court REMANDS this case for further fact-finding.**

IT IS SO ORDERED.

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S/Robert H. Cleland  
ROBERT H. CLELAND  
UNITED STATES DISTRICT JUDGE

Dated: May 22, 2007

I hereby certify that a copy of the foregoing document was mailed to counsel of record on this date, May 22, 2007, by electronic and/or ordinary mail.

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S/Lisa Wagner  
Case Manager and Deputy Clerk  
(313) 234-5522